IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

OP.No. 12080 of 2003(K)

PETITIONER:

E.SAINUDHEEN,
NIZAM MANZIL, KOLLAYIL P.O., MADATHARA, KOLLAM
(PEON), AGRICULTURAL INCOME TAX AND SALE TAX
DEPARTMENT (DISMISSED).

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS:
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1. THE JOINT COMMISSIONER-I,
COMMERCIAL TAXES DEPARTMENT, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY IT'S SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. SANDESH RAJA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON 1/8/2007 DELIVERED THE FOLLOWING:

OP 12080/03

APPENDIX

PETITIONER'S EXTS:

Ext.P1 A true copy of the order No.G.O.(RT)No.470/82/TD dated 6.8.1982 issued by the 2nd respondent.

Ext.P2 True copy of the representation submitted by the petitioner before the 1st respondent dated 17.2.2001.

Ext.P3 True copy of letter No.A6-10463/01/TX dated 17.8.2001 issued by the 1st respondent to the petitioner's

Ext.P4 True copy of the memo of charges issued as per No.A5.10463/01/TX dated 27.3.2002 issued by the 1st respondent.

Ext.P5 True copy of the written statemrnt of defence filed by the petitioner before the 1st respondent.

Ext.P6 True copy of the order No.A5.10248/02/TX dated 16.4.2002 issued by the 1st respondent.

Ext.P7 True copy of the show cause notice No.A5.10248/Os/TX dated 24.4.2002 issued by the 1st respondent.

Ext.P8 True copy of the enquiry report dated nil.

Ext.P9 True copy of the application submitted by the petitioner.

Ext.P10 True copy of the order No.A5-10248/02 TX dated 29.4.002 issued by the 1st respondent.

Ext.P11 true copy of the G.O.(RT)No.16/03/TD dated 10.1.2003.

Antony Dominic, J.

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O.P.No.12080 of 2003

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Dated this the 1st day of August, 2007.

JUDGMENT

This Original Petition is filed praying to quash Exts.P10 and P11 and to direct the respondents to reinstate the petitioner in service notionally with effect from 8.2.2001 and disburse all service benefits. Petitioner was a Peon in the Agricultural Income tax and Sales tax Department, who had entered service on 16.2.1970. While so, on an application made by him for leave without allowance for five years with effect from 1.3.1982 for taking up employment abroad, Ext.P1 order was passed by the second respondent granting him leave for the aforesaid period subject to the terms and conditions laid down in the order and in the concerned Government orders and circulars.

2. Availing of the leave granted to him, petitioner proceeded to Sultanate of Oman and got employed in the Special Force. It is stated that while so, on being inflicted with illness, he

was hospitalised and was thereafter sent to Jaslok Hospital and Research Centre, Mumbai, where he underwent an operation. It is stated that due to sickness, he left his employer and was continuing treatment in his native place. According to him, he made applications for extension of leave without allowance for further period of five years in 1987, 1991 and 1997, which were not responded to by the respondents. It is stated that finally he had made Ext.P2 representation dated 17.2.2001 seeking to rejoin duty on 8.2.2001 and in response thereof, by Ext.P3, he was directed to appear before the first respondent.

3. Petitioner claims that in pursuance to Ext.P3, he appeared before the first respondent and produced all documents, but however, was served a memo of charges with statement of allegations dated 27.3.2002 and thereafter, an Enquiry Officer was appointed to enquire into the charges vide Ext.P6 order. He had received notice of enquiry and appeared before the Enquiry Officer on 22.4.2002 and his statement was recorded. However, no evidence was adduced on behalf of the Department and no opportunity was granted to rebut the same. There was no further communication from the Enquiry Officer.

However, he received Ext.P7 show cause notice dated 24.2.2002 enclosing Ext.P8 report of the Enquiry Officer and calling upon him to submit explanation. Responding to Exts.P7 and P8, petitioner submitted Ext.P9 dated 26.4.2002 seeking ten days time to submit his explanation. According to him, without granting extension as sought for, Ext.P10 order was issued by the first respondent removing him from service with effect from 28.2.1987. He pursued the matter in appeal before the second respondent which also met with dismissal as is evident from Ext.P11 order. It is in the aforesaid background seeking to quash Exts.P10 and P11 that this petition has been filed.

4. Counsel for the petitioner contended that this is a case where an enquiry as contemplated under the Rules has not been conducted by the respondents. According to him, only a statement was recorded and without any further notice, Enquiry Officer concluded the enquiry and submitted Ext.P8 report finding him guilty. Petitioner complains that this was in violation of the principles of natural justice and therefore, the enquiry has to be held to be invalid. It is further contended that in response to Exts.P7 and P8, petitioner submitted Ext.P9 request seeking

ten days time despite his entitlement under the Kerala Civil Services (Classification, Control and Appeal) Rules for time upto one month. It is stated that even such a genuine request was declined by the respondents and thus reasonable opportunity to prove his innocence before the Disciplinary Authority also has been denied. It is also stated that he was not heard before imposing penalty and on that account also, according to him, Exts.P10 and P11 deserve to be invalidated.

5. On behalf of the respondents, Government Pleader would argue that this is a case where the petitioner has committed serious misconducts in as much as, he had not rejoined duty on the expiry of leave without allowance granted by the Government by Ext.P1 order. Government Pleader would also submit that in terms of the conditions of service as applicable to the petitioner, it was his duty to have got extended the leave well before its expiry. According to him, not only that the petitioner has not made any such application, but even no evidence has been produced to prove that any such application was in fact sent by him. It is pointed out that the Government was running against time on account of the impending retirement

of the petitioner, who was reaching the age of superannuation on 30.4.2004 and hence the petitioner was called upon to submit his explanation before 29.4.2002, as per Ext.P7 notice dated 24.4.2002. As regards the validity of the enquiry, it is submitted that the statement of the petitioner has been recorded and the Enquiry Officer rested his conclusions only on his statement and no material has been collected without notice to him. According to him, petitioner lost the opportunity of hearing due to his own fault and has not made out a case that any prejudice has been caused. Government Pleader would therefore submit that this is a case where misconduct has been proved and that the punishment imposed is proportionate to the proved misconduct.

6. I have considered the submissions made by the parties. In so far as the objection of the petitioner regarding the validity of the enquiry is concerned, I notice that Ext.P8 report of the Enquiry Officer itself states that in response to the enquiry notice, petitioner appeared before the Enquiry Officer on 22.4.2002 and his statement was recorded. In addition to that he has also submitted letter dated 22.4.2002 at the time of enquiry. He is recorded to have deposed before the Enquiry Officer that he had

nothing to reiterate other than what has been reported in his letter dated 22.4.2002. A perusal of the report shows that the Enquiry Officer has not recorded statement of any other witness nor has he received any further evidence, but has drawn his conclusions only on the material available before him. It is trite law that in domestic enquiry, it is not the quantity of evidence that is material but the quality is what determines the issue. In this case, the Department was satisfied that misconduct could be proved on the basis of statement made by the petitioner and the letter submitted by him and therefore did not adduce any other evidence. Therefore, the Enquiry Officer cannot be faulted on the ground that he has proceeded with the enquiry without further notice to the petitioner as there was no further proceeding to put the petitioner on notice. It is not his case that though he wanted to adduce further evidence, he was not afforded a chance by the Enquiry Officer. In such circumstance, I am not a position to find fault with the Enquiry Officer in concluding the enquiry and submitting Ext.P8 report, and the Disciplinary Authority was justified in acting upon the report if the report has inspired its confidence.

7. The other contention raised by the counsel for the petitioner is that in spite of his entitlement to have time upto one month for responding to Exts.P7 and P8, petitioner made only a reasonable request for ten days time in Ext.P9 which was not granted and the Disciplinary Authority therefore violated the principles of natural justice in proceeding to finalise the disciplinary action against him. Though this contention would appear to be attractive at the first blush, on a closer scrutiny, I am not inclined to accept the same. Evidently, petitioner was attaining the age of superannuation on 30.4.2002. Enquiry Officer's report was forwarded by the Disciplinary Authority under cover of Ext.P7 dated 24.4.2002. Since it was necessary to finalise the proceedings against the petitioner before he is superannuated on 30.4.2002, the Disciplinary Authority called upon the petitioner to submit his explanation before 29.4.2002. It was obviously with the intention of ensuring that the disciplinary proceedings against him are not concluded before his superannuation on 30.4.2002, that the petitioner made his request by Ext.P9 dated 26.4.2002 seeking ten days time for submitting his explanation, promising to submit the same before

8.5.2002. It is obvious that the attempt was to escape from the punitive action against him. In this background of facts, I do not see anything unfair in the Disciplinary Authority finalising the enquiry against the petitioner before his superannuation. That apart, if the petitioner had any reason for his request for extension, that should have found a place in Ext.P9 request made by him. Ext.P9 does not contain any such reason and therefore, it was an ill-motivated move of the petitioner and do not require acceptance by a court of law.

8. Yet another contention raised by the petitioner is that he was not heard before imposing punishment as per Ext.P10. When the Disciplinary Authority forwarded the enquiry report to the petitioner under the cover of Ext.P7, petitioner was informed that he will be afforded an opportunity of personal hearing on 29.4.2002. It was to this communication that the petitioner responded by Ext.P9 requesting that date of personal hearing may also be changed to 8.5.2002.

9. As I have already noticed, postponing the hearing beyond 29.4.2002 would have defeated the very purpose of initiating proceedings against the petitioner. In such circumstances, as the

Disciplinary Authority was running against time, it cannot be faulted for finalising the enquiry, although in the process, the petitioner did not have the benefit of personal hearing. Rules of natural justice have to yield to public interest and cannot be stretched to such illogical limits. In this case, public interest deserved that proceedings should be completed before his superannuation. That apart, petitioner has also not made out a case in his pleadings that he has been prejudiced in any manner for want of an opportunity of personal hearing. Ext.P10 shows that the Disciplinary Authority has considered every aspect of the matter with reference to the enquiry report and other materials placed before him. Thus absence of hearing, which the petitioner lost due to his own fault, also cannot invalidate the proceedings.

10. Petitioner pursued the matter in appeal, which was disposed of by Ext.P11. I notice from Ext.P11 that except the allegation that the petitioner had produced false documentary evidence in support of his treatment at Bombay, on the other allegations, the Appellate Authority has concurred with the Disciplinary Authority. Appellate order is also not vitiated on any of the grounds.

11. The conduct of the petitioner itself creates doubt on the veracity of his case that he was undergoing treatment for illness in his native place. As I have already noted, petitioner has not proved to have applied for extension of leave on the expiry of the first spell of leave granted by the Government. In fact, this Court by its order dated 5.9.2005 directed the petitioner to make available his passport containing endorsements at the relevant time. Despite this order, petitioner has not made available the passport, which naturally calls for an adverse inference against him. That apart, Ext.P2 representation submitted by the petitioner discloses that he was earlier removed from service w.e.f. 23.4.1977 and was reinstated by the Ist respondent as per GO(Rt) No.572/81/TD dated 8.9.81. Further he also states that he had applied for extension of leave till 30.4.2002, his date of superannuation, but requested that "since pensionary benefits on the basis of the 1997 revised scales of pay will be available to me only if I join duty and continue on duty for atleast 10 months, I may be permitted to rejoin duty". Thus, evidently, his attempt was only to get pension and it was not his intention to work for the Department that made him submit Ext.P2. These also

disentitles the petitioner the benefit of discretionary remedy under Article 226 of the Constitution of India.

12. In such circumstances, I do not find any merit in the contentions raised by the petitioner and the Original Petition is only to be dismissed. Accordingly, Original Petition will stand dismissed.

Antony Dominic,
Judge.

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